



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DWIGHT E. LACY,

Plaintiff,

vs.
DAVID BRINKMAN; BILL QUINN,

Defendants.

CASE NO. 13cv416-WQH-BGS
ORDER

HAYES, Judge:

The matter before the Court is the Motion to Proceed In Forma Pauperis (ECF No. 2).

BACKGROUND

On February 21, 2013, Plaintiff Dwight E. Lacy, proceeding pro se, initiated this action by filing a Complaint (ECF No. 1) and a Motion to Proceed In Forma Pauperis (ECF No. 2).

MOTION TO PROCEED IN FORMA PAUPERIS

All parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a plaintiff's failure to prepay the entire fee only if the plaintiff is granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a). *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). "To proceed in forma pauperis is a privilege not a right." *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir. 1965).

In his affidavit in support of the motion, Plaintiff states that he is unemployed,

1 he receives Social Security payments of \$834 per month, he has \$67 in a checking
 2 account, he owes \$754 each month in regular expenses, he owes \$20,000 in debts, and
 3 he does not own real estate, an automobile or any other valuable property. (ECF No.
 4 2 at 1-2). The Court concludes that Plaintiff is entitled to proceed in forma pauperis.

5 **INITIAL SCREENING PURSUANT TO 28 U.S.C. § 1915(E)(2)(B)**

6 After granting in forma pauperis status, a Court must dismiss a complaint sua
 7 sponte if the complaint “fails to state a claim on which relief may be granted.” 28
 8 U.S.C. § 1915(e)(2)(B); *see also Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001).
 9 In addition, “[i]f the court determines at anytime that it lacks subject-matter
 10 jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

11 The standard used to evaluate whether a complaint states a claim is a liberal one,
 12 particularly when the action has been filed pro se. *See Estelle v. Gamble*, 429 U.S. 97,
 13 97 (1976). However, even a “liberal interpretation ... may not supply elements of the
 14 claim that were not initially pled.” *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673
 15 F.2d 266, 268 (9th Cir. 1982). “[P]ro se litigants are bound by the rules of procedure.”
 16 *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995). Federal Rule of Civil Procedure 8
 17 provides that “[a] pleading that states a claim for relief must contain ... a short and plain
 18 statement of the claim showing that the pleader is entitled to relief....” Fed. R. Civ. P.
 19 8(a). “[A] plaintiff’s obligation to provide the grounds of his entitlement to relief
 20 requires more than labels and conclusions, and a formulaic recitation of the elements
 21 of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
 22 (quotation omitted).

23 Federal courts—unlike state courts—are courts of limited jurisdiction and lack
 24 inherent or general subject matter jurisdiction. Federal courts can only adjudicate those
 25 cases in which the United States Constitution and Congress authorize them to
 26 adjudicate. *See Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377 (1994). In the
 27 federal courts, subject matter jurisdiction may arise from either “federal question
 28 jurisdiction” or “diversity jurisdiction.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392

1 (1987); *see also* 28 U.S.C. §§ 1331-32. To invoke diversity jurisdiction, the complaint
 2 must allege that “the matter in controversy exceeds the sum or value of \$75,000,
 3 exclusive of interest and costs, and is between ... citizens of different States ... [or]
 4 citizens of a State and citizens or subjects of a foreign state....” 28 U.S.C. § 1332(a).
 5 To invoke federal question jurisdiction, the complaint must allege that the “action[]
 6 aris[es] under the Constitution, laws, or treaties of the United States.” 28 U.S.C. §
 7 1331.

8 The sole basis for subject matter jurisdiction alleged in the Complaint is pursuant
 9 to 42 U.S.C. § 1985.¹ Section 1985 provides a civil remedy for conspiracies to deprive
 10 a person or class of persons of equal protection of the laws or of equal privileges and
 11 immunities. *See* 42 U.S.C. § 1985(3); *Griffin v. Breckenridge*, 403 U.S. 88, 101-02
 12 (1971). To state a cause of action under 42 U.S.C. § 1985(3), a plaintiff must allege:
 13 “(1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any
 14 person or class of persons of the equal protection of the laws, or of equal privileges and
 15 immunities under the laws; and (3) an act in furtherance of this conspiracy; (4) whereby
 16 a person is either injured in his person or property or deprived of any right or privilege
 17 of a citizen of the United States.” *United Bhd. of Carpenters & Joiners of Am. v. Scott*,
 18 463 U.S. 825, 828-29 (1983). To satisfy the second element of a § 1985(3) claim, a
 19 plaintiff must allege not only deprivation of a legally protected right, but that such
 20 deprivation was “motivated by ‘some racial, or perhaps otherwise class-based,
 21 invidiously discriminatory animus behind the conspirators’ action.’” *RK Ventures, Inc.*
 22 v. *City of Seattle*, 307 F.3d 1045, 1056 (9th Cir. 2002) (quoting *Griffin*, 403 U.S. at
 23 102) (quotation omitted).

24 The Complaint fails to allege that Plaintiff was deprived “of a right motivated
 25 by some racial, or perhaps otherwise class-based, invidiously discriminatory animus
 26 behind the conspirators’ action.” *RK Ventures, Inc.*, 307 F.3d at 1056 (quotation
 27

28 ¹ The Complaint also cites 28 U.S.C. § 1343(a), which provides that “[t]he
 district courts shall have original jurisdiction of any civil action authorized by law to
 be commenced by any person” pursuant to 42 U.S.C. § 1985. 28 U.S.C. § 1343(a)(1).

1 omitted). Accordingly, the Complaint fails to adequately state a claim for violation of
2 § 1985(3). Pursuant to 28 U.S.C. § 1915(e)(2)(B), this action is dismissed for failure
3 to state a claim and for lack of subject matter jurisdiction.

4 **CONCLUSION**

5 IT IS HEREBY ORDERED that the Motion for Proceed In Forma Pauperis is
6 GRANTED. (ECF No. 2). The Complaint is DISMISSED without prejudice and the
7 Clerk of the Court shall close this case. No later than THIRTY (30) DAYS from the
8 date of this Order, Plaintiff may file an amended complaint, which shall be entitled,
9 "First Amended Complaint," and which shall comply with the Federal Rules of Civil
10 Procedure and adequately allege a basis for subject-matter jurisdiction. If Plaintiff does
11 not file a first amended complaint within thirty days, the case shall remain closed
12 without further order of the Court.

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14 Dated: 9/16/13


15 WILLIAM Q. HAYES
16 UNITED STATES DISTRICT JUDGE

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